

32.909

7 days) for making contract invoice payments.

(3) If the contract is a cost-reimbursement contract for services, use the clause with its *Alternate I*.

32.909 Contractor inquiries.

(a) Direct questions involving—

(1) Delinquent payments to the designated billing office or designated payment office; and

(2) Disagreements in payment amount or timing to the contracting officer for resolution. The contracting officer must coordinate within appropriate contracting channels and seek the advice of other offices as necessary to resolve disagreements.

(b) Small business concerns may contact the agency's local small business specialist or representative from the Office of Small and Disadvantaged Business Utilization to obtain additional assistance related to payment issues, late payment interest penalties, and information on the Prompt Payment Act.

Subpart 32.10—Performance-Based Payments

SOURCE: 60 FR 49715, Sept. 26, 1995, unless otherwise noted.

32.1000 Scope of subpart.

This subpart provides policy and procedures for performance-based payments under noncommercial purchases pursuant to subpart 32.1. This subpart does not apply to—

(a) Payments under cost-reimbursement contracts;

(b) Contracts for architect-engineer services or construction, or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based upon a percentage or stage of completion; or

(c) Contracts awarded through sealed bid procedures.

[60 FR 49715, Sept. 26, 1995, as amended at 65 FR 16281, Mar. 27, 2000]

32.1001 Policy.

(a) Performance-based payments are the preferred Government financing method when the contracting officer

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finds them practical, and the contractor agrees to their use.

(b) Performance-based payments are contract financing payments that are not payment for accepted items.

(c) Performance-based payments are fully recoverable, in the same manner as progress payments, in the event of default. Except as provided in 32.1003(c), the contracting officer must not use performance-based payments when other forms of contract financing are provided.

(d) For Government accounting purposes, the Government should treat performance-based payments like progress payments based on costs under subpart 32.5.

(e) Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of prompt payment (see subpart 32.9). However, each agency must make these payments in accordance with the agency's policy for prompt payment of contract financing payments.

[65 FR 16281, Mar. 27, 2000]

32.1002 Bases for performance-based payments.

Performance-based payments may be made on any of the following bases:

(a) Performance measured by objective, quantifiable methods;

(b) Accomplishment of defined events; or

(c) Other quantifiable measures of results.

32.1003 Criteria for use.

The contracting officer may use performance-based payments only if the following conditions are met:

(a) The contracting officer and offeror are able to agree on the performance-based payment terms;

(b) The contract is a fixed-price type contract; and

(c) The contract does not provide for other methods of contract financing, except that advance payments in accordance with subpart 32.4, or guaranteed loans in accordance with subpart 32.3 may be used.

[60 FR 49715, Sept. 26, 1995, as amended at 65 FR 16282, Mar. 27, 2000; 67 FR 70521, Nov. 22, 2002]